

Affirmation of Jason Habinsky

Exhibit

F

Philip Fei

1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

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5 PHILIP FEI, on behalf of himself and
6 classes of those similarly situated,

7

Plaintiff,

8

vs. 07 Civ. 8785 (HB)

9

WESTLB AG,

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Defendant.

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15 VIDEOTAPED DEPOSITION OF PHILIP FEI

16

New York, New York

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Thursday, May 8, 2008

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Reported by:

Adrienne M. Mignano

25 JOB NO. 202844

COPY

Philip Fei

1 Fei

2 know Betsy Austin.

3 Q. Who at this time in 2000 was Betsy
4 Austin?

5 A. Betsy Austin was the director of
6 human resources.

7 Q. What was the working relationship
8 between Betsy Austin and Pat Reed at that
9 time, if you know?

10 A. I believe Pat Reed reports to
11 Betsy Austin.

12 Q. Mr. Fei, according to the offer
13 letter marked as Fei Exhibit 1, it says
14 your bi-weekly salary will be \$2,615.38
15 equivalent to \$68,000 per annum; is that
16 correct?

17 A. That is correct.

18 Q. It also says you will be
19 eligible -- before we get to that, it says
20 in the first sentence that "We are pleased
21 to offer you the position of executive in
22 the human resources department."

23 And that is what you were
24 referring to before?

25 A. That's correct.

Philip Fei

1 Fei

2 Q. Do you recall what the amounts of
3 those raises were?

4 A. I can't say precisely, but
5 increases happen every year.

6 Q. Do you remember what your final
7 salary was at WestLB?

8 A. I believe it was either 85 or 86
9 thousand.

10 Q. Now, if you look at item number 3
11 of Fei Exhibit 1, talking about vacation.
12 The offer letter says your annual vacation
13 entitlement will be 12 days plus 2
14 personal days.

15 What did that become when you had
16 changed from payroll administrator to
17 payroll manager?

18 A. I don't remember precisely, but it
19 is definitely more than 12 days between an
20 executive and a manager.

21 Q. But you don't recall what?

22 A. I don't recall, but definitely
23 more than 12 days.

24 Q. Is that the same with respect to
25 personal days or did that stay the same?

Philip Fei

1 Fei

2 MR. BASSEN: So we're going to
3 take a break.

4 THE VIDEOGRAPHER: The time is
5 4:08, and we're going off the record.

6 (Thereupon, a recess was taken,
7 and then the proceedings continued as
8 follows:)

9 THE VIDEOGRAPHER: The time is
10 4:16, back on the record.

11 (Fei Exhibit 12, Time Recording,
12 marked for identification, as of this
13 date.)

14 BY MR. BASSEN:

15 Q. Are you able to tell us what this
16 document is?

17 A. This is the time recording when I
18 was working in WestLB.

19 Q. Now, time recording with respect
20 to whom?

21 A. Mine.

22 Q. I notice that there are other --
23 there are entries here that relate to
24 people other than yourself. Well, I don't
25 know if they are entries, but at least

Philip Fei

1 Fei

2 seminar, the American Payroll Association
3 seminar and you complained at the HR
4 department meeting, you started keeping
5 the overtime log that is marked as Exhibit
6 12; is that correct?

7 A. Correct.

8 Q. Does the overtime log marked as
9 Exhibit 12 contain all of the time that
10 you worked?

11 A. To the best of my ability, but
12 sometimes you can see it is not from
13 Monday to Friday. It's Monday to Tuesday.
14 Somehow I was busy and I forgot. I did
15 what I can.

16 Q. Well, I'll ask you another
17 question.

18 For the days that you did do it,
19 does it contain all of the time you worked
20 on those days?

21 A. Yes.

22 Q. Now, when it says time in, what
23 did you count as time in?

24 A. When I was in the WestLB's office.

25 Q. Is that different from when you

Philip Fei

1 **Fei**

2 A. I do not know.

3 Q. So why did you write down who the
4 people were who you said good night to?

5 A. Well, make a note for myself in
6 case question, Philip, prove me you left
7 at 6:30. Okay, okay, when I left at 6:30,
8 I say good night to Pat Reed.

9 Q. So in other words, Pat Reed saw
10 you leave at 6:30?

11 A. That's correct.

12 Q. Now, did you take any lunch?

13 A. Yes, I do.

14 Q. How long?

15 A. Usually one hour.

16 Q. And --

17 A. But, again, we are running
18 bi-weekly payroll. If it is on the
19 payroll week that I have to transmit
20 payroll, usually the business day for me
21 is Monday and Tuesday and usually I cannot
22 take lunch, meaning go downstairs and go
23 outside. Most of the time I eat at my
24 desk and do my job.

25 Q. So most of the time you worked,

Philip Fei

1 **Fei**

2 **you ate at your desk and did your job?**

3 A. During the payroll week, Monday to
4 Tuesday.

5 Q. I don't understand that.

6 **When was the payroll week?**

7 A. Payroll week is every other week.
8 We were bi-weekly, so payroll has to run
9 every other week.

10 Q. So am I correct that you're saying
11 that every other week on Monday and
12 Tuesday, you ate your lunch at your desk
13 and worked?

14 A. Sometimes. I would say most of
15 the time, because it is so busy.

16 Q. So some of the time you did that?

17 A. Yes.

18 Q. And other than those times, you
19 took lunch?

20 A. Generally, yes.

21 Q. A non-working lunch?

22 A. A non-working lunch, yes; I go
23 outside.

24 Q. Were there times that you stayed
25 at your desk, ate lunch, but did not work

Philip Fei

1 Fei

2 THE VIDEOGRAPHER: The time is
3 5:25, back on the record, and this
4 marks the beginning of tape number
5 four.

6 BY MR. BASSEN:

7 Q. Mr. Fei, during the time that
8 you -- I'll strike that and rephrase it.

9 What knowledge do you have about
10 the job duties of employees other than
11 yourself at WestLB?

12 A. Is that question other employees'
13 job duties, how much I do know their job
14 duties?

15 Q. Yes.

16 A. Aside from the people I work with,
17 very little.

18 Q. When you say the people you work
19 with, are you talking about in the human
20 resource department?

21 A. Could be other employees
22 interactive constantly.

23 Q. What employees were they?

24 A. In the operation department I go
25 quite often and at least every two weeks.

Philip Fei

1 Fei

2 Q. And you knew what that employee
3 was doing with respect to dealing with
4 you, correct?

5 A. Correct.

6 Q. Did you know what that employee
7 was doing when the employee was not
8 dealing with you?

9 A. No.

10 Q. In tax, which employees -- let me
11 ask you this question about the remaining
12 groups, tax, accounting, IT, you knew what
13 the employees and those departments were
14 doing when they were dealing with you,
15 correct?

16 A. Correct.

17 Q. Did you know what those employees
18 in those departments were doing when they
19 were not dealing with you?

20 A. Correct.

21 Q. You did not?

22 A. I did not.

23 Q. You are making a claim in a
24 lawsuit for WestLB not having paid you
25 overtime; is that right?